FILED
JUL 14 1955
HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1955.

No. 234

WILLIAM SEAWRIGHT,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

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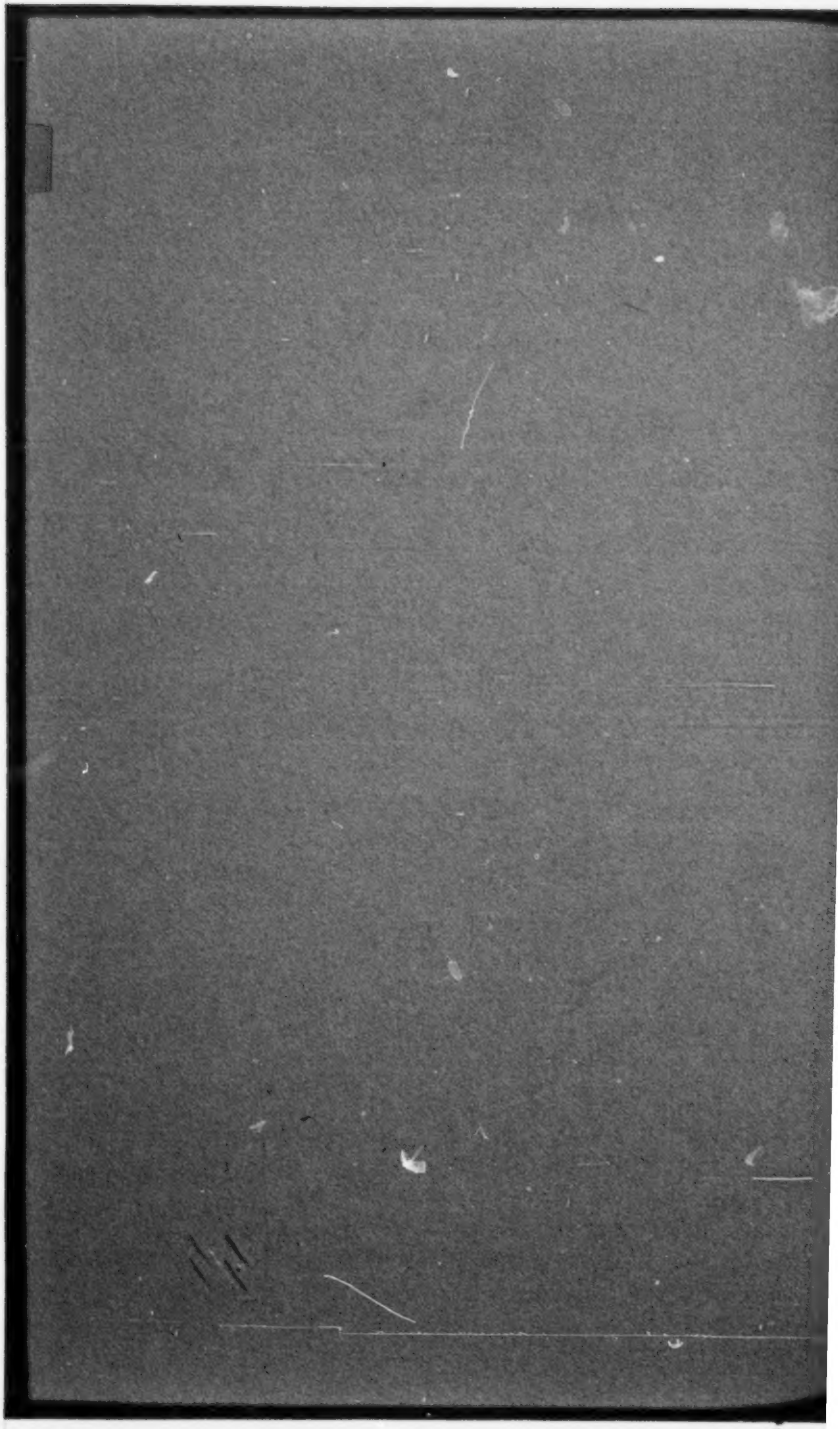

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In the Supreme Court of the United States

OCTOBER TERM, 1955.

No. _____

WILLIAM SEAWRIGHT,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

The petitioner prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit affirming the conviction of petitioner for wilfully endeavoring to influence a witness in a case pending in a United States Court in violation of Section 1503, Title 18, United States Code.

OPINIONS BELOW.

There was no opinion in the District Court. The Circuit Court of Appeals did not render an opinion but the order affirming the judgment of the District Court was entered on June 15, 1955 (R. 127a).

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered June 15, 1955 (R. 127a). The jurisdiction of this Court is invoked under Section 1254(1), Title 28, of the United States Code.

See also Rule 37(b)(2), Federal Rules of Criminal Procedure.

QUESTION PRESENTED.

Whether an indictment under Section 1503 of Title 18 of the United States Code is invalid when it does not contain the following three essential elements necessary to constitute the offense intended to be charged, namely, that the alleged act was done

1. corruptly, and
2. in the discharge of the duty of the witness, and
3. with knowledge that the person was in fact a witness;

and if so, does not a conviction under such an indictment violate the constitutional rights of the defendant under the Fifth and Sixth Amendments to the United States Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Amendment 5 of the United States Constitution provides:

ARTICLE [V]

> "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation." U. S. C. 1952 ed. Volume One, page XLIV.

Amendment 6 of the United States Constitution provides:

ARTICLE [VI]

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." U. S. C. 1952 ed. Volume One, page XLIV.

Section 1503 of Title 18 of the United States Code provides:

"Section 1503. Influencing or injuring officer, juror or witness generally. Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate or impede any witness, in any court of the United States or before any United States commissioner or other committing magistrate, or any grand or petit juror, or officer in or of any Court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any party or witness in his person or property on account of his attending or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences,

obstructs, or impedes, or endeavors to influence, obstruct or impede the due administration of justice, shall be fined not more than $5,000.00 or imprisoned not more than five years, or both. (June 25, 1948, c. 645, Par. 1, 62 Stat. 769.)" U. S. C. 1952 ed. Volume Two, page 2438.

STATEMENT.

The judgment of the Court of Appeals sought to be reviewed, affirmed a judgment convicting the petitioner of wilfully endeavoring to influence a witness in a case pending in a federal court in Grand Rapids, Michigan, in violation of Section 1503, Title 18, United States Code (R. 127a).

The petitioner was indicted on May 21, 1954 in the United States District Court for the Northern District of Ohio, Eastern Division (R. 3a). Petitioner pleaded "Not Guilty" and waived a trial by jury (R. 3a and 4a). Upon trial to the Court on September 22 and 23, 1954, defendant was convicted and sentenced to two years in a federal prison and fined $1,000.00 (R. 112a and 123a).

The indictment upon which defendant was convicted is as follows:

"INDICTMENT

The Grand Jury charges:

That on or about the 4th day of November, 1953, William Seawright, defendant herein, did, in the City of Cleveland in the Eastern Division of the Northern District of Ohio, wilfully endeavor to influence, intimidate and impede one Sarah Louise Glover, a witness in the case of United States of America v. LeRoy King, in the District Court of the United States, Western District of Michigan, Southern Division, endeavor to influence, obstruct and impede the due administration of justice; in violation of Title 18, Section 1503, United States Code.

A TRUE BILL:

M. L. HOEKSTRA,
Foreman.

SUMNER CANARY,
United States Attorney." (R. 3a.)

Objection to the sufficiency of the indictment under Section 1503 of Title 18 of the United States Code was made by petitioner by motions at various times during the trial and by motions subsequent to the trial. These motions were overruled by the trial court (R. 5a, 36a, 106a, 113a, 115a).

The indictment was held to be sufficient by the United States Circuit Court of Appeals for the Sixth Circuit (R. 127a).

REASONS FOR ALLOWANCE OF THE WRIT.

I. The Indictment Does Not Contain the Essential Elements of a Crime Under Section 1503 of Title 18, United States Code.

The first element of a crime under Section 1503 of Title 18, United States Code is that the act be done

corruptly, or
by threats of force, or
by any threatening letter or communication.

This indictment does not charge that the alleged crime was done in accordance with one or the other, or all, of these alternative, essential ingredients of a crime under the section.

A second element of a crime under the same section is that a corrupt endeavor to influence, intimidate or impede a witness must be made in connection with the discharge of his or her duty as a witness. It is the official character of the four categories of persons protected un-

der the statute that creates the basis of an offense thereunder. *Pettibone v. U. S.*, 148 U. S. 419, 423. This being clear, then a corrupt endeavor to influence must be in connection with the duty created by the official character of the person.

Thirdly, knowledge or scienter of the official character of the person as a witness is also an essential ingredient. *Pettibone v. U. S.*, 148 U. S. 419.

If the essential ingredients of the crime sought to be charged are not contained in the indictment then the indictment is insufficient. *U. S. v. Hess*, 124 U. S. 486, 487; *U. S. v. Carll*, 105 U. S. 611.

The Court below in its order (R. 127a) referred to the case of *Anderson v. United States*, 215 Fed. (2nd) 84, which it had decided earlier. However, the indictment in the *Anderson* case, which was also under Section 1503 of Title 18, United States Code, did charge that the alleged act was done "corruptly," so in that respect it is not strictly analogous to our instant case. Reference is made in the order in the instant case to the opinion in the *Anderson* case "and authorities there cited" (R. 127a). Two of the authorities cited in the *Anderson* case are the cases of *Hagner v. U. S.*, 225 U. S. 427 and *Cochran v. United States*, 157 U. S. 704. In the *Hagner* case, Mr. Justice Sutherland held in the opinion at page 865:

> "* * *. The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, and 'sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a firm conviction.' "

Here again, this Court emphasizes that the first part of the true test of the sufficiency of an indictment is that it contain the elements of the offense intended to be charged. The indictment in the instant case does not.

In the case of *Cochran v. U. S.*, 157 U. S. 704, Mr. Justice Brown held in the opinion in connection with indictments on page 705 as follows:

> "* * *. But the true test is, not whether it might possibly have been made more certain, but whether it contains every element of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a formal acquittal or conviction."

The Court below did not follow this rule of pleading as clearly set forth in these two cases by this Court that the indictment must first contain every element of the offense intended to be charged.

II. The Decision of the Court Below Involves Several Direct Conflicts with Decisions of Other Circuit Courts of Appeals on the Same Questions.

1. The indictment in the instant case does not charge that the defendant had knowledge that Sally Glover was, or was about to be, a witness in a case pending in a federal court. The Court below said in its order that this contention was without substance. This conclusion is in direct conflict with the decision of the United States Circuit Court for the Seventh Circuit in the case of *Genna vs. U. S.*, 293 Fed. 387. The indictment in the *Genna* case charged a violation of the precursor statute to Section 1503, namely, Section 241, Title 18, U. S. C. 1941 ed.

Volume Two, page 1551. This former section is identical in the pertinent parts to Section 1503, the statute in our case. The Court in the *Genna* case said:

> "Per Curiam: Genna and another were convicted on trial of an indictment in two counts. The first count charged that the defendant had intimidated a witness in violation of Section 135 of the Criminal Code. The second charged them with having conspired to intimidate a witness in violation of Section 136.
>
> (1) Nowhere is it averred, even inferentially, that the defendants, when making the threats had any knowledge that the person so threatened was or was about to be a witness in any trial or other proceeding. Omission of the scienter was fatal to the conviction on this count."

Here is, therefore, clearly a direct conflict between the Court below and the other Circuit Court.

2. Likewise the Court below is in direct conflict on the same point with the decision of the United States Circuit Court of Appeals for the Eighth Circuit in the case of *Kloss v. United States,* 77 Fed. 2nd 464. On page 464 in that case the Court said:

> "While the statute nowhere mentions the necessity for such knowledge, or any knowledge, it is yet by its terms such a statute as requires knowledge on defendant's part to charge in the indictment touching the fact that the person assaulted is a witness in a pending case and so courts have held."

3. The indictment in the instant case does not charge that the act was done "corruptly." The statute says the act must be done "corruptly," or "by threats or force," or "by any threatening letter or communication." The Court

below says, that the contention of defendant that the failure to use the word "corruptly" in the indictment rendered it insufficient, is "without substance" (R. 127a). This decision of the Court below is in conflict with the decision of the United States Circuit Court of Appeals for the Fifth Circuit in the case of *Johnson v. U. S.*, 87 Fed. 187. In that case an information for attempting to obstruct the due administration of justice in a district court, by furnishing to one charged with a criminal offense a false certificate to enable him to obtain a continuance was held to be defective where it charges the making of such certificate by inference only, and failed to charge that it was furnished by the defendant with a "corrupt" intent.

4. On the same point the decision of the Court below is also in direct conflict with a decision of the United States Court of Appeals for the Fourth Circuit in the case of *Martin v. U. S.*, 160 Fed. 2nd 76. In that case the Court said in his charge that an essential element of the alleged offense was an endeavor or attempt to influence a juror "corruptly," meaning for an improper motive, which might be caused by a desire to aid some one else or by hope of pecuniary reward. This is under the same statute as in our case. And in our case the Court below said in its order (R. 127a) that the contention that "corruptly" was an essential ingredient was "without substance" (R. 127a).

III. The Court Below Has Decided a Federal Question in a Way in Conflict with the Applicable Decisions of This Court.

The following three ingredients of a crime under Section 1503, Title 18, United States Code, namely, that the alleged act was done

(1) corruptly, and

(2) in the discharge of the duty of the witness, and

(3) with knowledge that the person was in fact a witness

seem clearly to be essential elements of the crime. As such then, each essential element of the crime must be charged in the indictment. The Court below held in its order (127a) that "these contentions are without substance" (R. 127a). This decision of the court below is in direct conflict with a number of decisions of this Court.

First, the principle was laid down by the Court in *U. S. v. Cruikshank,* 92 U. S. 542, that no essential element of the crime can be omitted from the indictment without destroying the whole pleading.

Secondly, the case of *United States vs. Hess,* 124 U. S. 486, 487. The Court said at page 487:

> "* * *. The general and with few exceptions, of which the present case is not one, the universal rule on this subject is, that all the material facts and circumstances embraced in the definition of the offense must be stated or the indictment will be defective. No essential element of the crime can be omitted without destroying the whole pleading. The omission cannot be supplied by intendment, or implication, and the charge must be made directly and not inferentially or by way of recital."

Thirdly, the decision of the Court below is in direct conflict with the decision of this Court in the case of *Pettibone v. U. S.,* 148 U. S. 419, which held at page 422 "that all the material facts and circumstances embraced in the definition of the offense must be stated or the indictment will be defective; any essential element of the crime cannot be supplied by implication."

This Court further said in the *Pettibone* case at page 424:

> "It seems clear that an indictment against a person for corruptly or by threats or force endeavoring to influence, intimidate, or impede a witness or officer in a court of the United States in the discharge of his duty, must charge knowledge or notice, or set out facts that show knowledge or notice on the part of the accused that the witness or officer was such."

In our case the indictment did not charge that the endeavor was made in connection with the discharge of the duty of the witness and neither did it charge that the defendant had knowledge or notice that the witness was such. Clearly the decision in our case conflicts with the *Pettibone* case in these two respects.

Fourth, the applicable principle goes back to *United States v. Cook*, 84 U. S. 538, which held at page 539 "every ingredient of which the offense is comprised must be accurately and clearly alleged." The decision of the Court below conflicts with this 1872 case.

Fifth, the decision of the Court below conflicts with the decision of this Court in the case of *Hagner v. U. S.*, 285 U. S. 427, and *Cochran v. U. S.*, 157 U. S. 704, both of which cases hold that the first part of a true test of the sufficiency of an indictment is whether it contains all of the essential elements of the crime intended to be charged.

IV. The Decision Herein Sustaining Conviction of the Defendant on an Indictment Which Does Not Charge the Essential Elements of the Crime as Set Forth in Section 1503 of Title 18, United States Code, Departs from the Accepted and Usual Course of Judicial Proceedings and is a Violation of Defendant's Rights Under the Fifth Amendment of the United States Constitution in Which He Was Held to Answer for a Crime for Which He Has Not Been Indicted.

Under the Fifth Amendment of the United States Constitution a person may not be deprived of his liberty without due process of law. Due process of law comprehends a formal accusation of a crime containing all of the ingredients of that crime. In this case the indictment purports to formally accuse the defendant of violating Section 1503 of Title 18, United States Code.

The indictment does not embrace all of the vital elements of a violation of Section 1503. Hence it is fatally defective. The due process clause protects substantial rights. The omission of an essential element of the crime intended to be charged is a matter of substance. *U. S. v. Carll,* 105 U. S. 611.

The indictment does not charge a crime against the laws of the United States. The defendant stands convicted of a violation of Section 1503 for which he has not actually been indicted. It would seem that this is a serious violation of the due process clause of the Fifth Amendment to the United States Constitution. It would seem that under the Fifth Amendment there can be no proceeding against the liberty of an individual which may result in the deprivation of liberty without the observance of those general rules established by this Court in our system of jurisprudence for the security of private rights.

V. The Decision Herein Sustaining the Conviction of Defendant Under this Indictment for Violating Section 1503 of Title 18 of the United States Code Transgresses the Rights of This Defendant Under the Sixth Amendment to the Constitution of the United States, to be Informed of the Nature and Cause of the Accusations Against Him.

Under the Sixth Amendment to the Constitution of the United States the accused has the right to be informed of the nature and cause of the accusation.

In *U. S. v. Mills,* N. C. 1833, 7 Pet. (32 U. S.) 142, this was construed to mean that the indictment must set forth the offense "with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged," and in *U. S. v. Cook,* Ohio 1872, 84 U. S. 538, that "every ingredient of which the offense is composed must be accurately and clearly alleged." This principle was followed in *U. S. v. Cruikshank,* La. 1876, 92 U. S. 557, *Evans v. U. S.,* 153 U. S. 584, and many later cases. So, every essential ingredient of the crime sought to be charged must be set out in the indictment. In the indictment in this case, as previously pointed out, three essential ingredients are omitted, namely, that the alleged act was done

1. corruptly, and

2. in the discharge of the person's duty as a witness, and

3. with knowledge that the person was a witness.

These omissions in the light of the cases cited above deprive the defendant of his rights under the Sixth Amendment of the United States Constitution.

VI. The Question Presented Herein Embodies a Special and Important Question of Federal Law Which Has Not Been But Should be Settled by This Court, Namely, Whether "Corruptly" and "in the Discharge of His (Her) Duty" and "Knowledge That the Person Was to be a Witness" are Essential Ingredients of the Crime Prohibited by Section 1503 of Title 18, United States Code.

In a case decided in 1948 in the United States Court of Appeals for the Fourth Circuit, *Martin v. U. S.*, 160 Fed. 2nd 76, the defendant was convicted of corruptly endeavoring to influence a juror. In the charge in that case the trial court said that an essential element of the alleged offense was an endeavor or attempt to influence a juror "corruptly," meaning for an improper motive, which might be caused by a desire to aid someone else or by hope of pecuniary reward. This was under the same statute as our case. The Court below in our case dismisses our contention that corruption is an essential of a crime under Section 1503 by saying it is "without substance" (R. 127a).

This Court has never passed on the question. Likewise, this Court has never specified that an endeavor to influence a witness under Section 1503 must be in connection with the discharge of the witness duty.

This Court did refer under a predecessor statute in the case of *Pettibone v. U. S.*, 148 U. S. 419, at page 424 to the question of the discharge of the duty of the witness. That predecessor statute was Section 5399 of the Revised Statutes of the United States. It is quoted by Mr. Chief Justice Fuller on page 420 of the *Pettibone* case as follows:

> "Section 5399. Every person who corruptly, or by threats or force, endeavors to influence, intimidate or impede any witness, or officer in any court of the United States, in the discharge of his duty, or by

threats or force obstructs or impedes, or endeavors to obstruct or impede the due administration of justice therein, shall be punished by a fine of not more than five hundred dollars or by imprisonment not more than three months or both."

This Court also held in the *Pettibone* case, at page 424, that knowledge or notice on the part of the accused that the witness was such must be alleged in an indictment under the former statute. This Court has not considered these special and important questions in connection with Section 1503, and it would seem that in the interests of justice they should be decided in view of the decision of the Court below that the contentions of petitioner, that they are essential elements of the crime sought to be charged, "are without substance" (R. 127a).

CONCLUSION.

For the foregoing reasons we respectfully submit that this petition for a writ of certiorari should be granted.

REES H. DAVIS,

Attorney for Petitioner.

July, 1955.

APPENDIX.

Judgment of the United States Court of Appeals for the Sixth Circuit.

No. 12,436.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

WILLIAM SEAWRIGHT,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

ORDER.

(Filed June 15, 1955.)

Before SIMONS, Chief Judge, MILLER and STEWART, Circuit Judges.

Appellant was convicted of violating Section 1503 of Title 18 of the United States Code in endeavoring to persuade a woman to change the testimony she was to give in a criminal case pending in a federal district court. The indictment was in the following language:

> "That on or about the 4th day of November, 1953, William Seawright, defendant herein, did, in the City of Cleveland in the Eastern Division of the Northern District of Ohio, wilfully endeavor to influence, intimidate and impede one Sarah Louise Glover, a witness in the case of United States of America v. LeRoy King, in the District Court of the United States, Western District of Michigan, Southern Division, endeavoring to influence, obstruct, and impede the due

administration of justice; in violation of Title 18, Section 1503, United States Code."

Appellant complains that this indictment was insufficient in failing to include the word "corruptly," in not containing an express allegation of appellant's knowledge that the woman was to be a witness, and in not including the statutory language "in the discharge of his (her) duty."

These contentions are without substance. The indictment "fairly apprised the defendant of the crime intended to be alleged so as to enable him to prepare his defense and to make the judgment, whether of acquittal or conviction, a complete defense to a second prosecution for the same offense." The indictment was therefore clearly sufficient. See Judge Martin's opinion for this Court in *Anderson v. United States*, 215 F. (2d) 84, at page 86, and authorities there cited.

Appellant's further contentions with respect to the conduct of his trial are likewise without merit. The case was tried to the court without a jury. As the trier of the facts, the district judge chose to credit the testimony of the Government witnesses and to disbelieve appellant's testimony. We cannot say that the judgment of conviction was not supported by substantial evidence. Moreover, the court's rulings upon the admission and exclusion of evidence were well within his discretion and not erroneous.

The judgment is affirmed.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 234

WILLIAM SEAWRIGHT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

No formal opinion of the Court of Appeals appears of record. The grounds of decision are stated in its judgment filed June 15, 1955 (R. 127-128; Pet. 16-17), not yet reported. The oral opinion of the district court appears at R. 106-112.

JURISDICTION

The judgment of the Court of Appeals was entered on June 15, 1955 (R. 125; Pet. 16-17). The

petition for a writ of certiorari was filed on July 14, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether an indictment charging that petitioner wilfully endeavored to influence a specified witness in a designated case, "endeavoring to influence, obstruct and impede the due administration of justice" in violation of 18 U.S.C. 1503, was invalid on the ground that the words "corruptly" and "in the discharge of the duty of the witness" were not used, and that the knowledge of petitioner that the person was a witness was not averred *in haec verba*.

STATUTE INVOLVED

18 U.S.C. 1503:

> Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States * * * in the discharge of his duty, * * * or corruptly, or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals for the Sixth Circuit (R. 127-128;

Pet. 16-17) affirming the judgment of the district court (R. 123) finding petitioner guilty of having wilfully endeavored to influence, intimidate, and impede a witness in the due administration of justice, as charged in the following indictment (R. 3):

> That on or about the 4th day of November 1953, William Seawright, defendant herein, did, in the City of Cleveland in the Eastern Division of the Northern District of Ohio, wilfully endeavor to influence, intimidate and impede one Sarah Louise Glover, a witness in the case of United States of America v. LeRoy King, in the District Court of the United States, Western District of Michigan, Southern Division, endeavoring to influence, obstruct and impede the due administration of justice; in violation of Title 18, Section 1503, United States Code.[1]

Upon the overruling of petitioner's motion for dismissal of the indictment (R. 5), petitioner proceeded to trial without a jury (R. 4). The government presented testimony of Sarah Louise Glover, the witness named in the indictment, and of her girl friend, that after the arrest of one LeRoy King on Mann Act charges for the transportation of Sarah Glover across state lines (R. 6-7, 11, 13-23, 27-30, 35-36) a secret appointment was arranged

[1] The petition, in its reproduction of the indictment, varies from the record in substituting for the word "endeavoring" the word "endeavor" (Pet. 4).

by an anonymous telephone caller, pursuant to which petitioner picked up the girls on the appointed night, took them to a bedroom in the house of one Nettie Miller (R. 7-10, 21), and there urged Sarah Glover to testify that she had crossed the state line by public transportation (R. 12, 30, 32-34). Nettie Miller confirmed the fact and time of the meeting and its duration of an hour or more (R. 26).

Petitioner, on the stand in his own behalf, admitted the meeting, the fact that he ordered drinks sent up during the discussion, and that the discussion lasted over an hour (R. 70-71, 94, 97). He testified that he was a professional bondsman, that the meeting had occurred because Sarah Glover had phoned him to obtain bond for King, and that on the night in question he had refused to go to her apartment about the bond because as a Negro he did not wish to go into the apartment in a white neighborhood (R. 65-66); that when Glover and her girl friend later appeared in petitioner's own neighborhood he did not wish to talk with the two publicly because "they were so painted up" and were white women; that he took them to the house in question but discussed only the obtaining of bond for King; and that he did not know that Glover was a witness in the case (R. 63-74, 82-83, 86-99). He stated that he could not recall whether he had appeared at the removal hearing in King's case prior to the meeting with the girls (R. 98-99).

The district court found petitioner guilty (R. 107-112) and imposed a sentence of two years'

imprisonment and a fine of $1,000 (R. 123). Upon appeal, the Court of Appeals rejected a challenge to the indictment as "without substance", pointing out that the indictment fairly enabled petitioner to prepare his defense (R. 128; Pet. 17).

ARGUMENT

The indictment, which fully informed petitioner of the offense charged against him, and protects him from subsequent prosecution for the same offense, is sufficient on its face.[2] Petitioner's contention that the absence of the word "corruptly" renders the indictment insufficient overlooks the fact that the indictment charges, *inter alia*, that petitioner "wilfully" attempted to "influence" the witness, "endeavoring to influence, obstruct and impede the due administration of justice" (*supra*, p. 3). To charge a willful effort to influence, obstruct, and impede the administration of justice is to charge corrupt conduct. *United States* v. *Polakoff*, 121 F. 2d 333, 335 (C. A. 2), certiorari denied, 314 U.S. 626; *Broadbent* v. *United States*, 149 F. 2d 580, 581 (C.A. 10); *Bosselman* v. *United States*, 239 Fed. 82, 86 (C.A. 2).

Equally lacking in merit is the contention that the omission of the words "in the discharge of the duty of the witness" is fatal to the indictment. The words "in the discharge of his duty" appear

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[2] That this is the true test, see *Cochran and Sayre* v. *United States*, 157 U.S. 286, 290; *Evans* v. *United States*, 153 U.S. 584, 590-591, 594; *Hagner* v. *United States*, 285 U.S. 427, 431; *United States* v. *Mills*, 7 Peters 138, 142-143.

in the statute as only one of a number of convenient expressions to narrow the application of the offense to attempts to obstruct justice, as distinguished from acts having no reference to a judicial matter. No misapprehension of what is charged as the purpose of the influence can occur when another way of saying the same thing is employed, *i.e.* when it is charged, as here, that petitioner wilfully endeavored to influence, intimidate, and impede a person described as a witness in a specified case, in an endeavor to obstruct justice.

Similarly, the inescapable effect of the language of the indictment disposes of petitioner's argument that the indictment failed sufficiently to charge him with knowledge that it was a witness with whom he was tampering. He was accused of endeavoring to obstruct justice by influencing a witness in a specific case. A person does not seek obstruction of justice by tampering with persons generally—he seeks to influence and intimidate a person of whose relationship to the case he has knowledge. [3]

[3] *Pettibone* v. *United States*, 148 U.S. 197, repeatedly cited by petitioner (Pet. 6, 10, 11, 14, 15), is clearly distinguished by language of the decision itself (p. 204): "The combination to commit an offence against the United States was averred to consist in a conspiracy against the State [to interfere with workers at a mine] * * *; but *the pleader carefully avoided the direct averment that the purpose of the confederation was the interruption of the course of justice in the United States court.* * * * [T]here was no evidence given on the trial showing or tending to show that the writ of injunction mentioned and set forth in the indictment was served upon the defendants or either of them, or that they or either of them had any notice or knowledge of the issue thereof [italics supplied]."

As was stated in *Parsons* v. *United States,* 189 F. 2d 252, 253 (C.A. 5):

> The attack upon the indictment for failing to specifically allege that defendant knew that the person he was charged with endeavoring to corruptly influence was, or was to be, a witness, is completely hypercritical and without substance. The indictment, in the exact language of the statute, plainly and by necessary implication, precisely charges the defendant with the crime denounced thereby.
>
> The cynically technical approach which formerly enshrouded the consideration of even the plainest and simplest indictments, and, in many instances, made a mockery of simple justice, no longer governs their consideration.

More eloquent, perhaps, of the clarity of the charge was the fact that petitioner was manifestly perpared to meet it and offered his own categorical testimony in an effort to do so, asserting that he had not known Sarah Glover to be a witness, and offering an involved explanation of his secrecy in meeting her. [4]

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[4] The effect of the language in charging dealings with Sarah Glover *as a witness* is so clear that petitioner's attorney, in presenting petitioner on the stand and framing questions directly to controvert the language of the indictment used the language "as a witness" repeatedly, i.e. (R. 73-74):

"Q. Now, Mr. Seawright, will you tell this court whether or not on November 4th or 5th of 1952 you endeavored to

CONCLUSION

The question presented in this case was correctly decided below on the basis of the particular language of the specific indictment. No conflict of decisions is involved. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1955.

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influence Sally Glover as a witness in the case of United States vs. Leroy King? A. No, sir, I did not.

"Q. Did you endeavor to intimidate her as a witness in connection with that case? A. No, sir, I did not.

"Q. Did you endeavor to impede her as a witness in the case of United States vs. Leroy King pending in Grand Rapids? A. No, sir, I did not."

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